

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6180 of 1986

and

SPECIAL CIVIL APPLICATION No 6181 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KASHIRAM M PATEL

Versus

SPL SECRETARY

Appearance:

1. Special Civil Application No. 6180 of 1986
MR RN SHAH for Petitioners
MR VM PANCHOLI, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 7, 8
2. Special Civil ApplicationNo 6181 of 1986
MR RN SHAH for Petitioners
MR VM PANCHOLI, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 7, 8

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/08/1999

ORAL JUDGEMENT

In these petitions under Article 226/227 of the Constitution, the petitioners, who were tenants of the land in question being a part of Survey No. 370 situate within the limits of Modasa Municipality, have challenged the order dated 16.7.1986 (Annexure "D") of the State Government in revision application No. 895/85 and in revision application No. 840/85, by which, under Section 211 of the Bombay Land Revenue Code, 1879, the Deputy Secretary, Revenue Department (Appeals) confirmed the order dated 25.10.1985 (Annexure "A") of the District Development Officer, Sabarkantha.

2. The Special Civil Applications arise from the order of the State Government confirming the order dated 25.10.1985 passed by the District Development Officer, Sabarkantha by which the petitioners were required to vacate the land in question on the ground that there was violation of the building regulations of the Modasa Nagar Panchayat and also there was violation of the Ribbon Development Rules. After several rounds of proceedings before the lower authorities and the State Government, ultimately the matter was examined by the State Government in revision on the basis of the report dated 23.3.1984 of the Executive Engineer. As per the said report, the Ribbon Development Rules were required to be applied and the construction put up within 36.5 Mtrs. from the center of the road in question being a State highway could not be regularized. The District Development Officer and the State Government, therefore, held that the cabins put up by the petitioners on the land in question being within 36.5 Mtrs. from the center of the State highway could not be regularized. The additional ground of violation of building regulations was also examined.

3. At the hearing of these petitions, the learned counsel for the petitioners has pointed out that as per the Ribbon Development Rules, in case of State highway while the control line is 36.5 Mtrs., the construction line is 10 Mtrs. The distinction between the construction line and the control line is explained as under :-

If there are small buildings like residential units, small godowns, small centres, such constructions should be permitted beyond the

construction line i.e. a distance of 10 Mtrs. from the center of the concerned road being the State highway, where as if the constructions are in the nature of factories, big godowns, cinema halls, hotels, hospitals and other premises frequented by a large number of pedestrians or vehicular traffic, such construction should be permitted only beyond the control line i.e. beyond 36.5 Mtrs. from the center of the road.

4. It is not the case of any of the respondents that any of the constructions put up on the land in question is in the nature of factories, big godowns, cinema halls, hospitals or any premises which would warrant a heavy pedestrian flow and vehicular traffic and, therefore, the learned counsel for the petitioner is justified in contending that the authorities have erroneously applied the control line instead of applying the construction line. According to the petitioners, their constructions are beyond 10 Mtrs. from the center of the road in question.

In view of this factual position, the order passed by the District Development Officer and confirmed by the State Government in revision cannot be upheld and the same will have to be set aside.

5. The next question is whether the petitioners can claim any benefit of regularization in view of the finding given by the authorities that there was violation of the building regulations. In view of the aforesaid controversy, the Modasa Municipality was ordered to be joined as a party respondent on 23.6.1999. The Municipality is served and Mr R.R. Tripathi, learned counsel appears for the Modasa Municipality.

6. According to the learned counsel for the petitioners, the constructions put up by the petitioners were prior to the coming into the existence of the Municipality and the constructions were put up when the Nagar Panchayat was there.

The learned Counsel for the Municipality states, without prejudice to their power to take action in accordance with law in future, that for the present the Municipality does not propose to take any action in respect of the constructions put up by the petitioners.

7. As regards the contention that one of the factors which appears to have weighed with the authorities for passing the impugned orders is that the original owners

of the land in question had obtained N.A. permission in the year 1952, but the N.A. permission was granted for a limited period and thereafter it was not renewed, in view of the undisputed fact that thereafter the Town Planning Scheme has come into force and the land in question is within a part of the industrial area covered by the Town Planning Scheme and particularly within the municipal limits and that the land in question is now almost in the middle of the town through which the State highway also passes, the Court does not consider the non-renewal of the N.A. application as such a fatal fact as to disentitle the petitioners from getting claim for regularization considered by the Competent Authorities.

8. In view of the aforesaid, while this Court sets aside the orders passed by the State Government and the original order passed by the District Development Officer, the Court makes it clear that this judgment shall not preclude the State Government and the Executive Engineer from taking appropriate action in accordance with law as and when the authorities are required to widen the road in question, which is stated to be a State highway.

9. Subject to the aforesaid liberty and observations, the petitions are allowed. The impugned orders at Annexure "A" and "D" to the petition are quashed and set aside.

10. Rule is made absolute to the aforesaid extent with no order as to costs.

August 17, 1999 (M.S. Shah, J.)
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